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In the Supreme Court of the United States

OCTOBER TERM, 1975

ARMIN ARTHUR SCHURMANN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that reversal of his convictions is required because the trial court improperly limited his efforts to impeach the credibility of a government witness.

Following a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted of two counts of theft of goods moving in interstate commerce, in violation of 18

U.S.C. 659. He was sentenced to two consecutive terms of five years' imprisonment. The court of appeals affirmed (Pet. App.).

Evidence adduced at trial established that two trucks containing goods moving in interstate commerce were stolen in Houston, Texas, in February 1974. On February 4, 1974, a truck with a cargo of angle iron was stolen from the premises of a trucking company (Tr. 57-59). Shortly after that theft, petitioner contacted William Follis and asked him to locate a buyer for the angle iron (Tr. 167-169). Follis contacted John Clarkson, a pipe broker, who met with petitioner and inspected the angle iron at a warehouse where it was stored (Tr. 67-69). Clarkson subsequently sold the angle iron to a third party for $5,900, giving petitioner $4,000 of the proceeds (Tr. 70-72).

On February 6, 1974, a truck containing aluminum drilling pipe worth approximately $50,000 was stolen from a Houston gas station where it had been parked for the night (Tr. 16, 21-26, 133). Petitioner and Roger Lamb unloaded the truck at the warehouse, and petitioner again contacted Follis in order to find a buyer for the pipe (Tr. 172, 187-190). Petitioner met with Clarkson, who arranged a sale of the pipe to a pipe supply company (Tr. 74-77, 111-112). Petitioner was present when the pipe was delivered to that company a few days later (Tr. 113, 143-144, 173).

The pipe was subsequently identified as stolen property, and arrests followed (Tr. 79, 135). A

search of the warehouse by the FBI produced several tags and a raincoat that had been on the truck containing the angle iron when it was stolen (Tr. 24-26, 252-255). The lettering on a sign found on that truck when it was recovered matched the size and design of the letters in a stencil found in a subsequent search of an automobile dealership operated by petitioner. The type of ink used in the sign also matched the ink residue found on the stencil (Tr. 247-248, 258-259, 271-273, 282-283).

Petitioner contends that his convictions must be reversed because the trial court did not permit a defense witness to testify concerning the reputation for truth and veracity of one government witness, Roger Lamb (Tr. 289-290).

As the court of appeals held, however, any error in excluding this testimony was harmless. In addition to the circumstantial evidence—including the stencil that had apparently been used to disguise one of the stolen trucks—the testimony of three government witnesses in addition to Lamb directly linked petitioner to the thefts.

The extent of Lamb's testimony was that he had helped petitioner unload the stolen aluminum pipe at the warehouse and that two days later petitioner informed him that he would not be paid because "the boy got caught." Lamb did not testify regarding the theft, the sale of the angle iron, or the disposition of the stolen pipe (Tr. 186-196).

William Follis testified that petitioner asked him after each of the thefts to find a buyer for the angle

iron and the aluminum pipe. Follis stated that he informed John Clarkson of petitioner's requests (Tr. 167-174). Clarkson testified that he met with petitioner at the warehouse to view and inspect stolen goods after each theft (Tr. 68-74, 110-112). Clarkson further testified that he arranged for the sale of the goods for petitioner and gave petitioner $4,000 from the proceeds of his sale of the angle iron (Tr. 70-77). Moreover, petitioner was identified as one of those present during the delivery of the stolen aluminum pipe to the pipe supply company, not only by Follis and Clarkson but also by the warehouseman who unloaded the pipe (Tr. 113, 143-144, 173).

In view of the overwhelming evidence of petitioner's guilt, the court of appeals properly determined that the exclusion of testimony concerning the reputation for truth and veracity of one government witness was harmless error. That determination involved only the application of settled principles to the specific facts of this case, and it does not warrant review by this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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